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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/292,056	04/14/1999	JOEL S. GREENBERGER	PITT-1DIV	3040

7590 05/26/2010  
ANSEL M SCHWARTZ  
ONE STERLING PLAZA  
201 N CRAIG STREET SUITE 304  
PITTSBURGH, PA 15213

EXAMINER
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BEISNER, WILLIAM H

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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05/26/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/292,056	<b>Applicant(s)</b> GREENBERGER ET AL.	
	<b>Examiner</b> WILLIAM H. BEISNER	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,47-64,70,74-81,86-97,99,100,103,104 and 114-127 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,47-64,70,74-81,86-97,99,100,103,104 and 114-127 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/9/01</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Specification***

1. The disclosure is objected to because of the following informalities:

The reference to the parent application needs to be updated to include its current status.

Pages 6-10 of the instant specification are missing.

Appropriate correction is required.

***Allowable Subject Matter***

2. Claims 1, 47-64, 70, 74-81, 86-97, 99, 100, 101, 103, 104 and 114-127 are allowed.

3. The following is a statement of reasons for the indication of allowable subject matter:

Claims 1, 47-64, 70, 74-81, 86-97, 99, 100, 101, 103, 104 and 114-127 define over the prior art rejections of record because the combination of the references of Bisconte and Price do not meet the instantly claimed combination of elements recited in independent claims 1, 51, 57, 70, 74, 75, 80 and 114 including the claimed means for dynamically controlling (element 216 (Fig. 1b, page 13, line 17 through page 14, line) the closed environment of the incubation means. Specifically, the reference of Bisconte does not teach a dynamically controlled environment as instantly claimed. The flow of sterile and hot air which passes through compartment 3A is not dynamic as required of the instant claims (See page 37 of the Appeal Brief filed 2/5/2010). The combination of the

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references of Bisconte and Price also fail to teach or suggest the use of biochemistry as part of the determining means (See page 28-29 of the Appeal Brief filed 2/5/2010). The combination of the reference of Bisconte and Price are drawn solely to the use of imaging techniques.

### ***Conclusion***

4. This application is in condition for allowance except for the following formal matters:

See the discussion above with respect to the specification.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM H. BEISNER whose telephone number is (571)272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael A. Marcheschi, can be reached on 571-272-1374. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/William H. Beisner/  
Primary Examiner  
Art Unit 1797**

WHB